(16)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Cr. M.P.No.146/2007

PETITIONERS : 1. Asha Verma Widow of Late Shri Madan Kishore Verma, aged about 40 years;

2. Ravikant Verma Son of Late Shri Madan Kishore Verma, aged about 22 years; student of B.A. final;

3. Neha D/o Late Shri Madan Kishore Verma, aged about 16 years; Natural Guardian-Mother- Asha Verma

All are residents of Mohan Building, Shankar Nagar, Bilaspur (C.G.)

Vs.

RESPONDENT State of Madhya Pradesh (Now State of Chhattisgarh)

PETITION UNDER SECTION 482 OF THE CODE OF CRIMINAL PRODECURE, 1973 FOR RECALLING OF THE ORDER DATED 10.03.2006 PASSED BY THIS HON'BLE COURT IN CRIMINAL APPEAL NO.1517/1998

Present:-
Shri V. K. Pandey, counsel for the petitioners.
Shri Akhil Agrawal, P.L. for the State.

ORAL ORDER
(Passed on 06-08-2007)

Heard.

(2) This is an application filed under section 482 of Cr.P.C. for recalling order dated 10-03-2006 passed in Criminal Appeal No.1517 of 1996.

(3) Brief facts are that in special case No.05 of 1992, one Madan Kishore Verma was convicted by the Special Judge, Bilaspur under

(12)

section 7 and 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act and was sentenced to undergo rigorous imprisonment for one year for both the offences. Madan Kishore Verma preferred Criminal Appeal No.1517 of 1996 before the High Court of Madhya Pradesh at Jabalpur. The appeal was admitted for hearing on 13-09-1996. During pendency of the appeal, Madan Kishore Verma died on 15-08-2003. His legal representatives i.e. the present petitioners moved an application before this Court for being brought on record which was allowed vide order dated 21-11-2003. The appeal was listed for hearing on 09-03-2006 but was passed over due to non-representation of the appellants i.e. the legal representatives of the deceased appellant who were brought on record. The appeal was again taken for hearing on 10-03-2006. Since no one appeared for the appellants and no representation was made on their behalf, the appeal was dismissed for non-prosecution on 10-03-2006. This petition under section 482 of Cr.P.C. was filed for recalling order dated 10-03-2006 after lapse of more than 1 year i.e. on 16-04-2007.

(4) Shri V. K. Pandey, learned counsel for the petitioners submitted that the Criminal Appeal No.1517 of 1996 admitted for hearing ought not to have been dismissed for non-prosecution. Reliance was placed on **Bani Singh and others vs. State of U.P. AIR 1996 S.C. 2439** and **Shyam Deo Pandey and others vs. The State of Bihar AIR 1971 S.C. 1606** in support of his arguments. It was further submitted that if the order dated 10-03-2006 is not recalled, the petitioners living under penury, would suffer irreparable loss because conviction of the

(18)

deceased-appellant-Madan Kishore Verma would result in disentitling them to any of the service benefits accruing to the legal representatives of the deceased-appellant.

(5) On the other hand, Shri Akhil Agrawal, learned Panel Lawyer for the State submitted that the delay in filing this petition under Section 482 of Cr.P.C. has not been satisfactorily explained as also no explanation has been given for the non-representation of the appellants on 09-03-2006 & 10-03-2006.

(6) Having heard rival submissions, I have considered the case law cited by the petitioners. In view of the fact that the appeal was admitted for hearing, as also for doing substantial justice, order dated 10-03-2006 passed by this Court should be recalled.

(7) Accordingly, the application Cr.M.P.No.146 of 2007 is allowed. Order dated 10-03-2006 passed by this Court in Criminal Appeal No.1517 of 1996 is recalled. Criminal Appeal No.1517 of 1996 is restored to its original number. Registry is directed to requisition the record of the Court below expeditiously and to list this Criminal Appeal for final hearing in the week commencing 03rd September, 2007.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Tumane